

SENATE BILL No. 406

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-11.

Synopsis: Medicaid false claims. Makes certain procedural changes to the false claims act and Medicaid false claims act to remove inconsistencies and comply with federal law.

Effective: July 1, 2014.

Mishler

January 14, 2014, read first time and referred to Committee on Health and Provider Services.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 406

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-11-5.5-2, AS ADDED BY P.L.222-2005,
2 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 2. (a) This section does not apply to:
4 (1) a claim, record, or statement concerning income tax (IC 6-3);
5 or
6 (2) a claim, request, demand, statement, record, act, or
7 omission made or submitted after June 30, 2014, in relation to
8 the Medicaid program described in IC 12-15.
9 (b) A person who knowingly or intentionally:
10 (1) presents a false claim to the state for payment or approval;
11 (2) makes or uses a false record or statement to obtain payment or
12 approval of a false claim from the state;
13 (3) with intent to defraud the state, delivers less money or
14 property to the state than the amount recorded on the certificate
15 or receipt the person receives from the state;
16 (4) with intent to defraud the state, authorizes issuance of a



1 receipt without knowing that the information on the receipt is
2 true;

3 (5) receives public property as a pledge of an obligation on a debt
4 from an employee who is not lawfully authorized to sell or pledge
5 the property;

6 (6) makes or uses a false record or statement to avoid an
7 obligation to pay or transmit property to the state;

8 (7) conspires with another person to perform an act described in
9 subdivisions (1) through (6); or

10 (8) causes or induces another person to perform an act described
11 in subdivisions (1) through (6);

12 is, except as provided in subsection (c), liable to the state for a civil
13 penalty of at least five thousand dollars (\$5,000) and for up to three (3)
14 times the amount of damages sustained by the state. In addition, a
15 person who violates this section is liable to the state for the costs of a
16 civil action brought to recover a penalty or damages.

17 (c) If the factfinder determines that the person who violated this
18 section:

19 (1) furnished state officials with all information known to the
20 person about the violation not later than thirty (30) days after the
21 date on which the person obtained the information;

22 (2) fully cooperated with the investigation of the violation; and

23 (3) did not have knowledge of the existence of an investigation,
24 a criminal prosecution, a civil action, or an administrative action
25 concerning the violation at the time the person provided
26 information to state officials;

27 the person is liable for a penalty of not less than two (2) times the
28 amount of damages that the state sustained because of the violation. A
29 person who violates this section is also liable to the state for the costs
30 of a civil action brought to recover a penalty or damages.

31 SECTION 2. IC 5-11-5.7-1, AS ADDED BY P.L.197-2013,
32 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 JULY 1, 2014]: Sec. 1. (a) This chapter applies only to claims,
34 requests, demands, statements, records, acts, and omissions made or
35 submitted in relation to the Medicaid program described in IC 12-15.
36 **Sections 3 through 18 of this chapter apply to claims, requests,**
37 **demands, statements, records, acts, and omissions made or**
38 **submitted in relation to the Medicaid program described in**
39 **IC 12-15 in violation of IC 5-11-5.5-2 or IC 5-11-5.7-2.**

40 (b) The following definitions apply throughout this chapter:

41 (1) "Claim" means a request or demand for money or property,
42 whether under a contract or otherwise, and whether or not the



state has title to the money or property, that:

(A) is presented to an officer, employee, or agent of the state;
or

(B) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's behalf or to advance a state program or interest, and if the state:

(i) provides or has provided any part of the money or property that is requested or demanded; or

(ii) will reimburse the contractor, grantee, or other recipient for any part of the money or property that is requested or demanded.

(2) ~~"Documentary material"~~ **"Document", "electronically stored information", or "tangible thing" includes: means:**

(A) ~~the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, chart, or other document; a writing, a drawing, a graph, a chart, a photograph, a sound recording, or an image;~~

(B) ~~other data or a data compilation stored in any medium from which information can be obtained either directly or accessible through computer or other information retrieval systems; together with instructions and all other materials necessary to use or interpret the data compilations; after translation by the responding party into a reasonably usable form; and~~

(C) any tangible thing; and

~~(D) a product of discovery.~~

(3) "Investigation" means an inquiry conducted by an investigator to ascertain whether a person is or has been engaged in a violation of this chapter.

(4) "Knowing", "knowingly", or "known" means that a person, regarding information:

(A) has actual knowledge of the information;

(B) acts in deliberate ignorance of the truth or falsity of the information; or

(C) acts in reckless disregard of the truth or falsity of the information;

and requires no proof of specific intent to defraud.

(5) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(6) "Obligation" means an established duty, whether or not the duty is fixed, arising from:



- 1 (A) an express or implied contractual relationship;
- 2 (B) a grantor-grantee relationship;
- 3 (C) a licensor-licensee relationship;
- 4 (D) a fee-based or similar relationship;
- 5 (E) a statute;
- 6 (F) a rule or regulation; or
- 7 (G) the retention of an overpayment.
- 8 (7) "Person" includes a natural person, a corporation, a firm, an
- 9 association, an organization, a partnership, a limited liability
- 10 company, a business, or a trust.
- 11 (8) "Product of discovery" means the original or duplicate of:
- 12 (A) a deposition;
- 13 (B) an interrogatory;
- 14 (C) a document;
- 15 (D) a thing;
- 16 (E) a result of the inspection of land or other property; or
- 17 (F) an examination or admission;
- 18 that is obtained by any method of discovery in a judicial or an
- 19 administrative proceeding of an adversarial nature. The term
- 20 includes a digest, an analysis, a selection, a compilation, a
- 21 derivation, an index, or another method of accessing an item
- 22 listed in this subdivision. **The term also includes electronically**
- 23 **stored information.**
- 24 (9) "State" means Indiana or any agency of state government. The
- 25 term does not include a political subdivision.
- 26 SECTION 3. IC 5-11-5.7-2, AS ADDED BY P.L.197-2013,
- 27 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 28 JULY 1, 2014]: Sec. 2. (a) ~~This section does not apply to a claim;~~
- 29 ~~record; or statement concerning income tax (IC 6-3).~~
- 30 ~~(b)~~ (a) A person who:
- 31 (1) knowingly presents, or causes to be presented, a false or
- 32 fraudulent claim for payment or approval;
- 33 (2) knowingly makes, uses, or causes to be made or used, a false
- 34 record or statement that is material to a false or fraudulent claim;
- 35 (3) has possession, custody, or control of property or money used,
- 36 or to be used, by the state, and knowingly delivers, or causes to be
- 37 delivered, less than all of the money or property;
- 38 (4) is authorized to make or deliver a document certifying receipt
- 39 of property used, or to be used, by the state and, with intent to
- 40 defraud the state, authorizes issuance of a receipt without
- 41 knowing that the information on the receipt is true;
- 42 (5) knowingly buys or receives, as a pledge of an obligation or



debt, public property from an employee who is not lawfully authorized to sell or pledge the property;

(6) knowingly:

(A) makes, uses, or causes to be made or used, a false record or statement concerning an obligation to pay or transmit money or property to the state; or

(B) conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state;

(7) conspires with another person to perform an act described in subdivisions (1) through (6); or

(8) causes or induces another person to perform an act described in subdivisions (1) through (6);

is, except as provided in subsection ~~(c)~~ **(b)**, liable to the state for a civil penalty of at least five thousand five hundred dollars (\$5,500) and not more than eleven thousand dollars (\$11,000), as adjusted by the federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note, Public Law 101-410), and for up to three (3) times the amount of damages sustained by the state. In addition, a person who violates this section is liable to the state for the costs of a civil action brought to recover a penalty or damages.

~~(c)~~ **(b)** If the factfinder determines that the person who violated this section:

(1) furnished state officials with all information known to the person about the violation not later than thirty (30) days after the date on which the person obtained the information;

(2) fully cooperated with the investigation of the violation; and

(3) did not have knowledge of the existence of an investigation, a criminal prosecution, a civil action, or an administrative action concerning the violation at the time the person provided information to state officials;

the person is liable for a penalty of not less than two (2) times the amount of damages that the state sustained because of the violation. A person who violates this section is also liable to the state for the costs of a civil action brought to recover a penalty or damages.

SECTION 4. IC 5-11-5.7-3, AS ADDED BY P.L.197-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. (a) The:

(1) attorney general; and

(2) inspector general;

have concurrent jurisdiction to investigate a violation of section 2 of this chapter.

(b) If the attorney general discovers a violation of section 2 of this



chapter, the attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(c) If the inspector general discovers a violation of section 2 of this chapter, the inspector general shall certify this finding to the attorney general. The attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(d) If the attorney general or the inspector general is served by a person who has filed a civil action under section 4 of this chapter, the attorney general has the authority to intervene in that action as set forth in section 4 of this chapter.

(e) If the attorney general:

(1) is disqualified from investigating a possible violation of section 2 of this chapter;

(2) is disqualified from bringing a civil action concerning a possible violation of section 2 of this chapter;

(3) is disqualified from intervening in a civil action brought under section 4 of this chapter concerning a possible violation of section 2 of this chapter;

(4) elects not to bring a civil action concerning a possible violation of section 2 of this chapter; or

(5) elects not to intervene under section 4 of this chapter;

the attorney general shall certify the attorney general's disqualification or election to the inspector general.

(f) If the attorney general has certified the attorney general's disqualification or election not to bring a civil action or intervene in a case under subsection (e), the inspector general has authority to:

(1) bring a civil action concerning a possible violation of section 2 of this chapter; or

(2) intervene in a case under section 4 of this chapter.

(g) The attorney general shall certify to the inspector general the attorney general's disqualification or election under subsection (e) in a timely fashion, and in any event not later than:

(1) sixty (60) days after being served, if the attorney general has been served by a person who has filed a civil action under section 4 of this chapter; or

(2) one hundred eighty (180) days before the expiration of the statute of limitations, if the attorney general has not been served by a person who has filed a civil action under section 4 of this chapter.

~~(h) A civil action brought under section 4 of this chapter may be filed in:~~

~~(1) a circuit or superior court in Marion County; or~~



(2) ~~a circuit or superior court in the county in which a defendant or plaintiff resides.~~

(i) ~~(h)~~ The state is not required to file a bond under this chapter.

SECTION 5. IC 5-11-5.7-4, AS ADDED BY P.L.197-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) A person may bring a civil action for a violation of section 2 of this chapter on behalf of the person and on behalf of the state. The action:

(1) must be brought in the name of the state; and

(2) may be filed in **any court with jurisdiction.** ~~a circuit or superior court in:~~

(A) ~~the county in which the person resides;~~

(B) ~~the county in which a defendant resides; or~~

(C) ~~Marion County.~~

(b) ~~Except as provided in section 5 of this chapter,~~ An action brought under this section may be dismissed **voluntarily by the person bringing the action** only if:

(1) ~~the person obtains the prior written consent of the attorney general or the inspector general, if applicable; files a written motion to dismiss explaining why dismissal is appropriate;~~ and

(2) the court issues an order:

(A) granting the motion; and

(B) explaining the court's reasons for granting the motion.

(c) A person who brings an action under this section shall serve:

(1) a copy of the complaint; and

(2) a written disclosure that describes all relevant material evidence and information the person possesses;

on both the attorney general and the inspector general. The person shall file the complaint under seal, and the complaint shall remain under seal for at least sixty (60) days. The complaint shall not be served on the defendant until the court orders the complaint served on the defendant following the intervention or the election not to intervene of the attorney general or the inspector general. The state may elect to intervene and proceed with the action not later than sixty (60) days after it receives both the complaint and the written disclosure.

(d) For good cause shown, the attorney general or the inspector general may move the court to extend the time during which the complaint must remain under seal. A motion for extension may be supported by an affidavit or other evidence. The affidavit or other evidence may be submitted in camera.

(e) Before the expiration of the time during which the complaint is sealed, the attorney general or the inspector general may:



(1) intervene in the case and proceed with the action, in which case the attorney general or the inspector general shall conduct the action; or

(2) elect not to proceed with the action, in which case the person who initially filed the complaint may proceed with the action.

(f) The defendant in an action filed under this section is not required to answer the complaint until twenty-one (21) days after the complaint has been unsealed and served on the defendant.

(g) After a person has filed a complaint under this section, no person other than the attorney general or the inspector general may:

(1) intervene; or

(2) bring another action based on the same facts.

(h) If the person who initially filed the complaint:

(1) planned and initiated the violation of section 2 of this chapter; or

(2) has been convicted of a crime related to the person's violation of section 2 of this chapter;

upon motion of the attorney general or the inspector general, the court shall dismiss the person as a plaintiff.

SECTION 6. IC 5-11-5.7-5, AS ADDED BY P.L.197-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) If the attorney general or the inspector general intervenes in an action under section 4 of this chapter, the attorney general or the inspector general is responsible for prosecuting the action and is not bound by an act of the person who initially filed the complaint. The attorney general or the inspector general may do the following:

(1) File a complaint.

(2) Amend the complaint of a person who has brought an action under section 4 of this chapter, to:

(A) clarify or add detail to the claims in which the state is intervening; or

(B) add additional claims to which the state contends the state is entitled to relief.

(3) Move for a change of venue to Marion County if the attorney general or the inspector general files a motion for change of venue not later than ten (10) days after the attorney general or the inspector general intervenes.

For statute of limitation purposes, a pleading filed by the attorney general or the inspector general relates back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the state arises out of the conduct, transactions, or



1 occurrences set forth, or attempted to be set forth, in the original filed
 2 complaint. Except as provided in this section, the person who initially
 3 filed the complaint may continue as a party to the action.

4 (b) With the approval of the court, the attorney general or the
 5 inspector general may dismiss the action after:

- 6 (1) notifying the person who initially filed the complaint; and
- 7 (2) the court has conducted a hearing at which the person who
- 8 initially filed the complaint was provided the opportunity to be
- 9 heard on the motion.

10 The court may consider a request by the attorney general or the
 11 inspector general to dismiss the action but is not bound by the request.
 12 Additionally, the court may permit the attorney general or inspector
 13 general to ~~be dismissed from~~ **withdraw his or her appearance in** the
 14 case and may permit the person who initially filed the complaint to
 15 continue to prosecute the action **in the name of the state.**

16 (c) The attorney general or the inspector general may settle the
 17 action if a court determines, after a hearing, that the proposed
 18 settlement is fair, adequate, and reasonable in light of the
 19 circumstances. Upon a showing of good cause, the court may:

- 20 (1) conduct the settlement hearing in camera; or
- 21 (2) lift all or part of the seal to facilitate the investigative process
- 22 or settlement.

23 The court may consider an objection to the settlement brought by the
 24 person who initially filed the complaint, but is not bound by this
 25 objection.

26 (d) Upon a showing by the attorney general, the inspector general,
 27 or the defendant that unrestricted participation by the person who
 28 initially filed the complaint:

- 29 (1) will interfere with or unduly delay the prosecution of the case
- 30 by the attorney general or the inspector general;
- 31 (2) will involve the presentation of repetitious or irrelevant
- 32 evidence, or evidence introduced for purposes of harassment; or
- 33 (3) will cause the defendant to suffer undue burden or
- 34 unnecessary expense;

35 the court may impose reasonable limitations on the person's
 36 participation, including a limit on the number of witnesses that the
 37 person may call, a limit to the length of testimony that the person's
 38 witness may present, a limit to the person's cross-examination of a
 39 witness, or otherwise limit the participation by the person in the
 40 litigation.

41 (e) If the attorney general or the inspector general elects not to
 42 intervene in the action, the person who initially filed the complaint has



1 the right to prosecute the action. Upon request, the attorney general or
2 the inspector general shall be served with copies of all documents filed
3 in the action and may obtain a copy of depositions and other transcripts
4 at the state's expense.

5 (f) If the attorney general and the inspector general have elected not
6 to intervene in an action in accordance with section 4 of this chapter,
7 upon a showing of good cause, a court may permit either the attorney
8 general or the inspector general to intervene at a later time. The
9 attorney general may move to intervene at any time. If the attorney
10 general has not moved to intervene, the inspector general may move to
11 intervene by providing written notice to the attorney general of the
12 inspector general's intent to intervene. If the attorney general does not
13 move to intervene earlier than fifteen (15) days after receipt of the
14 notice of intent to intervene, the inspector general may move to
15 intervene. If the attorney general or the inspector general intervenes
16 under this subsection, the attorney general or the inspector general is
17 responsible for prosecuting the action as if the attorney general or the
18 inspector general had intervened in accordance with section 4 of this
19 chapter.

20 (g) If the attorney general or inspector general shows that a specific
21 discovery action by the person who initially filed the complaint will
22 interfere with the investigation or prosecution of a civil or criminal
23 matter arising out of the same facts, the court may, following a hearing
24 in camera, stay discovery for not more than sixty (60) days. After the
25 court has granted a sixty (60) day stay, the court may extend the stay,
26 following a hearing in camera, if it determines that the state has
27 pursued the civil or criminal investigation with reasonable diligence
28 and that a specific discovery action by the person who initially filed the
29 complaint will interfere with the state's investigation or prosecution of
30 the civil or criminal matter.

31 (h) A court may dismiss an action brought under this chapter to
32 permit the attorney general or the inspector general to pursue its claim
33 through an alternative proceeding, including an administrative
34 proceeding or a proceeding brought in another jurisdiction. The person
35 who initially filed the complaint has the same rights in the alternative
36 proceedings as the person would have had in the original proceedings.
37 A finding of fact or conclusion of law made in the alternative
38 proceeding is binding on all parties to an action under this section once
39 the determination made in the alternative proceeding is final under the
40 rules, regulations, statutes, or law governing the alternative proceeding,
41 or if the time for seeking an appeal or review of the determination
42 made in the alternative proceeding has elapsed.



SECTION 7. IC 5-11-5.7-6, AS ADDED BY P.L.197-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) The person who initially filed the complaint is entitled to the following amounts if the state prevails in the action:

(1) Except as provided in subdivision (2), if the attorney general or the inspector general intervened in the action, the person is entitled to receive at least fifteen percent (15%) and not more than twenty-five percent (25%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(2) If the attorney general or the inspector general intervened in the action and the court finds that the evidence used to prosecute the action consisted primarily of specific information, other than information provided by the person bringing the action, contained in:

(A) a transcript of a criminal, a civil, or an administrative hearing;

(B) a legislative, an administrative, or another public **state** report, hearing, audit, or investigation; or

(C) a news media report;

the person is entitled to receive not more than ten percent (10%) of the proceeds of the action or settlement, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(3) If the attorney general or the inspector general did not intervene in the action, the person is entitled to receive at least twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(4) If the person who initially filed the complaint:

(A) planned and initiated the violation of section 2 of this chapter; or

(B) has been convicted of a crime related to the person's violation of section 2 of this chapter;

the person is not entitled to an amount under this section.

After conducting a hearing at which the attorney general or the inspector general and the person who initially filed the complaint may be heard, the court shall determine the specific amount to be awarded under this section to the person who initially filed the complaint. The



award of reasonable attorney's fees plus an amount to cover the expenses and costs of bringing the action is an additional cost assessed against the defendant and may not be paid from the proceeds of the civil action.

(b) If:

(1) the attorney general or the inspector general did not intervene in the action; and

(2) the defendant prevails;

the court may award the defendant reasonable attorney's fees plus an amount to cover the expenses and costs of defending the action, if the court finds that the action is frivolous, vexatious, or brought primarily for purposes of harassment.

(c) The state is not liable for the expenses, costs, or attorney's fees of a party to an action brought under this chapter.

SECTION 8. IC 5-11-5.7-7, AS ADDED BY P.L.197-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) This section does not apply to an action brought by:

(1) the attorney general;

(2) the inspector general;

(3) a prosecuting attorney; or

(4) a state employee in the employee's official capacity.

(b) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is brought by an incarcerated offender, including an offender incarcerated in another jurisdiction.

(c) A court does not have jurisdiction over an action **or claim** brought under section 4 of this chapter against the state, a state officer, a judge (as defined in IC 33-23-11-7), a justice, a member of the general assembly, a state employee, or an employee of a political subdivision, if the action **or claim** is based on information known to the state at the time the action was brought.

(d) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon an act that is the subject of a civil suit, a criminal prosecution, or an administrative proceeding in which the state is a party.

(e) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon information contained in:

(1) a transcript of a criminal, a civil, or an administrative hearing in which the state or the state's agent is a party;

(2) a legislative, an administrative, or another public state report, hearing, audit, or investigation; or



(3) a news media report;
 unless the person bringing the action either, before a public disclosure under this section voluntarily discloses to the state the information on which the allegations or transactions in a claim are based, or has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and the person bringing the action has voluntarily provided this information to the state before an action is filed under section 4 of this chapter.

(f) In determining whether a prior public disclosure bars a court from exercising jurisdiction over an action brought under section 4 of this chapter, the court shall consider, but is not bound by, any objection brought by the attorney general or the inspector general.

SECTION 9. IC 5-11-5.7-8, AS ADDED BY P.L.197-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) An employee, contractor, or agent who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others to:

(1) object to or otherwise stop an act or omission described in section 2 of this chapter; ~~or~~

(2) initiate, testify, assist, or participate in an investigation, an action, or a hearing; ~~under this chapter; or~~

(3) perform any other lawful act in furtherance of other efforts to stop one (1) or more violations under this chapter;

is entitled to all relief necessary to make the employee, contractor, or agent whole.

(b) Relief under this section must include:

(1) reinstatement with the same seniority status the employee, contractor, or agent would have had but for the act described in subsection (a);

(2) two (2) times the amount of back pay;

(3) interest on the back pay; and

(4) compensation for any special damages sustained as a result of the act described in subsection (a), including costs and expenses of litigation and reasonable attorney's fees.

(c) An employee, **contractor, or agent** may bring an action for the relief provided in this section in any court with jurisdiction.

(d) A civil action under this section may not be brought more than three (3) years after the date the retaliation occurred.

SECTION 10. IC 5-11-5.7-9, AS ADDED BY P.L.197-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2014]: Sec. 9. (a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under this chapter may be served at any place in Indiana.

(b) A civil action under section 4 of this chapter is barred unless it is commenced:

(1) not later than six (6) years after the date on which the violation is committed; or

(2) not later than three (3) years after the date when facts material to the cause of action are known or reasonably should have been known by a state officer or employee who is responsible for addressing the false claim, ~~However, an action is barred unless it is commenced not but in no event~~ later than ten (10) years after the date on which the violation is committed, **whichever occurs later.**

(c) In a civil action brought under this chapter, the state is required to establish:

(1) the essential elements of the offense; and

(2) damages;

by a preponderance of the evidence.

(d) If a defendant has been convicted (including a plea of guilty or nolo contendere) of a crime involving fraud or a false statement, the defendant is estopped from denying the elements of the offense in a civil action brought under section 4 of this chapter that involves the same transaction as the criminal prosecution.

SECTION 11. IC 5-11-5.7-10, AS ADDED BY P.L.197-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 10. (a) Whenever the attorney general, the inspector general, or the designee of the attorney general or the inspector general has reason to believe that a person may be in possession, custody, or control of documentary material, **electronically stored information, a tangible thing**, or information relevant to an investigation under this chapter involving a false claim, the attorney general, the inspector general, or the designee of the attorney general or inspector general may, before commencing a civil proceeding under this chapter, issue and serve a civil investigative demand requiring the person to do one (1) or more of the following:

(1) Produce the documentary material, **electronically stored information, or tangible thing** for inspection and copying.

(2) Answer an interrogatory in writing concerning the documentary material, **electronically stored information, tangible thing**, or information.

(3) Give oral testimony concerning the documentary material,



1 electronically stored information, tangible thing, or
2 information.

3 **(4) Furnish any combination of material, other evidence,**
4 **answers, or testimony.**

5 (b) If a civil investigative demand is a specific demand for a product
6 of discovery, the official issuing the civil investigative demand shall:

7 (1) serve a copy of the civil investigative demand on the person
8 from whom the discovery was obtained; and

9 (2) notify the person to whom the civil investigative demand is
10 issued of the date of service.

11 SECTION 12. IC 5-11-5.7-14, AS ADDED BY P.L.197-2013,
12 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2014]: Sec. 14. (a) The production of documentary material
14 in response to a civil investigative demand served under this chapter
15 shall be made in accordance with ~~Trial Rule 34~~ **the rules of civil**
16 **procedure concerning the production of documents, electronically**
17 **stored information, and tangible things.**

18 (b) Each interrogatory in a civil investigative demand served under
19 this chapter shall be answered in accordance with ~~Trial Rule 33:~~ **the**
20 **rules of civil procedure concerning interrogatories.**

21 (c) The examination of a person under a civil investigative demand
22 for oral testimony served under this chapter shall be conducted in
23 accordance with ~~Trial Rule 30:~~ **the rules of civil procedure**
24 **concerning oral depositions.**

25 SECTION 13. IC 5-11-5.7-16, AS ADDED BY P.L.197-2013,
26 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2014]: Sec. 16. (a) A person who has failed to comply with a
28 civil investigative demand is subject to sanctions under ~~Trial Rule 37~~
29 **the rules of civil procedure** to the same extent as a person who has
30 failed to cooperate in discovery.

31 (b) A person who objects to a civil investigative demand issued
32 under this chapter may seek a protective order in accordance with ~~Trial~~
33 **Rule 26(C): the rules of civil procedure.**

34 SECTION 14. IC 5-11-5.7-18, AS ADDED BY P.L.197-2013,
35 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2014]: Sec. 18. Proceedings under this chapter are governed
37 by the Indiana Rules of Trial Procedure **if the proceedings are held in**
38 **state court, and by the Federal Rules of Civil Procedure if the**
39 **proceedings are held in federal court. unless the Indiana Rules of**
40 **Trial Procedure are inconsistent with this chapter.**

